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THE JURY SYSTEM.

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There are to be found, not unfrequently, in the legal and other periodicals of the day, articles advocating the abolition of jury trials, upon the assumption that the system has proved a failure, and should, therefore, no longer be continued as part of our judicial machinery.

Before such a radical change is undertaken, it should certainly be made clear that the method or methods to be substituted therefor, will produce better results in the aggregate.

It is not to be denied that there is much of truth in many of the objections urged against the working of the jury system and the results reached thereby, yet is it entirely clear that substantially these same difficulties will not exist under any system that it is proposed to substitute for it? Many of the evils complained of result, not from the character of the tribunal before which cases are tried, but from the characteristics of the human race, and will be found present in some form under any system that can be devised.

The objections most usually urged against the jury system, are of a twofold character, the first being that under the methods now in force, the men best qualified for the duties and responsibilities of the position are not usually found in the jury box, and that there is danger that bribery may be called into play to affect the result, and the second being that owing to the increased com-

plexity of business affairs, the questions of fact involved in the litigation of the day have become so intricate and complex, that a jury, as usually constituted, is not competent to consider and decide the same, and further that juries composed of men taken from the farm, the workshop and other like avocations, are not fitted to sift out evidence, to reason clearly and logically thereon and apply to the facts the rules of law given them by the court, and that consequently verdicts are largely the results of chance or prejudice.

The objections based upon the personal character and ability of those who are found in the jury box, have much greater weight when applied to juries serving in the courts of the larger cities, which it must be remembered form but a small part of the entire number, and these objections may be largely obviated by improved methods of selecting and summoning jurymen, and by awakening public sentiment to the necessity that exists for all good citizens to bear their part of this duty which is due to the community and State of which they are members.

If it be true that juries, when composed of men of good character and average education and ability, can render valuable aid in the administration of justice, then the efforts of reformers should be directed to the perfecting, instead of the abolition, of the system.

Owing to the limits necessarily imposed upon the length of a magazine article, it is impossible to deal with all the phases of the subject and therefore nothing beyond making a few suggestions touching the general subject will be attempted in the present article.

It is not to be denied, as is urged by those who claim that the jury system has become antiquated, that with the advance of modern civilization, questions of great intricacy are more frequent than in the earlier days, and it may be true that there is a larger percentage of cases, which owing to their character and the nature of the evidence to be adduced therein, are not fitted to be tried before a jury. It does not follow, however, that there are not many cases arising, which are of a nature peculiarly adapted to be submitted to a jury. To meet the necessities of the case, it is not required that the jury system should be abolished, but only that such a change in the law should be made, as will enable the court to send each case for trial before the tribunal best fitted to deal therewith.

Owing to the guaranty of the right to a trial by jury in law cases, found in the Constitution of the United States and of the

several States, courts are practically powerless in this respect and it sometimes follows that cases, which, though technically belonging to the law side of the court, are nevertheless, owing to the nature or multiplicity of the questions involved and the character of the evidence to be adduced in support thereof, unfitted to be submitted to a jury, yet must be heard before a jury by reason of the sweeping nature of the constitutional guaranty.

The remedy for this evil lies not in abolishing jury trials, but in modifying the requirements of the Federal and State Constitutions, so that by proper legislation on this subject cases at law involving the examination of lengthy accounts or other issues of a complex nature, may be sent for trial before the court, or before referees, as the exigency of the situation may require.

Eliminating this class of cases from consideration, we are left to deal with that large variety of causes, in which the questions of fact are the controlling ones, and the query is, whether a jury, composed of men of average intelligence and judgment, is or is not as competent to deal with and settle such issues as any other tribunal that might be substituted therefor.

It is generally urged by those opposed to the jury system, that it cannot be expected that men, taken from the ordinary vocations of life, can reason as correctly and logically upon facts submitted to them, as would men who are specially trained in the exercise of the reasoning faculties. In a general sense this may be true, but it does not reach the root of the matter under consideration.

Juries are not ordinarily called upon to reason out conclusions from given facts, and to determine what action should be taken in the future in consonance with the results reached by their reasoning upon admitted or proven facts or premises.

What is required of them is to determine the facts pertaining to past transactions, transactions ordinarily not participated in or brought about by men of trained logical faculties, but such as occur among men of average knowledge and ability.

In the vast majority of instances, the facts are to be arrived at by a consideration of the actions of the participants, of the motives that ordinarily affect men under like circumstances, what the probabilities are as gathered from our common knowledge of the actions of men under the influences operating upon the actors at the time the acts were done, which become the facts controlling the decision to be reached.

The knowledge possessed by a jury of twelve men of fair average ability and judgment, in matters of this kind is greater than that possessed by a judge or judges, no matter how learned in the law or rules of logic the latter may be.

It is easy to assume that a jury, through ignorance, cannot be expected to understand or to rightfully decide upon the questions of fact submitted to them, but will the assumption bear the test of experience?

It is very seldom that the jury fail to grasp the pivotal point or points in the case. When they do, the fault usually lies at the door of counsel or of the court.

If the attorneys, trying the cause, will do their duty in carefully presenting the issues and in introducing the evidence in proper form and sequence, and the court, in the instructions given, does its duty in this particular, there need be no fear that the jury will not understand what the decisive questions in the case are.

We must be careful not to confuse the widely different duties devolving upon the court and jury in the trial of causes.

Of the court there is demanded a knowledge of the principles of the law, and the power to reason therefrom in a logical method and to explain and apply these principles to the assumed facts of the given case. The more severely the mind of the judge is trained in the rules and methods of logical reasoning and deduction, the greater the danger that he may thereby be unfitted from reaching the proper conclusions of fact, when called upon to deal with the acts, motives and purposes of the great mass of the community.

Years spent in the study of legal principles may be of value to the jurist, but will not greatly aid him in determining facts, which depend upon the actions of men unskilled in the law, perhaps illiterate, and always subject to the influences of their surroundings. Herein the knowledge of twelve men, who are accustomed to mingle, more or less, with their fellow-men and to meet them in the varied occupations of daily life, is superior to that of the judge, who, of necessity, lives a life comparatively remote therefrom.

In the majority of civil cases, the conclusions of fact must be based upon the reasonable probabilities derivable from the evidence, and it is of no moment that the jury might not be able to sustain the conclusions reached, by a process of logical reasoning, showing the method by which the result has been attained, such as is expected of the court in announcing the conclusions of law.

It is of moment that the tribunal, called upon to decide the facts, shall be possessed of that acquaintance with the actions, motives, modes of thought and reasoning of ordinary men, that it can, almost intuitively perhaps, discern the reasonable probabil-

ities from its familiarity with the ordinary life and mode of thought of the community.

Furthermore, in submitting questions of fact to a jury, the evidence is viewed by twelve, instead of by one or two or three minds only, and there is great safety in a result that is reached after considering the suggestions of the larger number.

It is practical results that are aimed at, not theoretical, and is it not true that the verdicts of juries in the large majority of cases meet the approval of the court before which the cases have been tried? Can it be demonstrated that juries err in solving questions of fact in a larger percentage of cases than do the trial courts in deciding the questions of law submitted to them?

Has not experience shown that juries are capable of dealing with questions of fact, and of deciding the same according to the reasonable probabilities, in the large majority of cases, and can greater accuracy or better results be expected from any of the substitutes proposed therefor? Until the affirmative of this proposition is established beyond cavil, it would be most unwise to abolish a system, which has certainly given as satisfactory results as any other branch of governmental machinery.

Furthermore, though a correct decision upon the merits of a case may be admitted to be of the highest need, yet it is of almost equal importance that the means employed shall be of such a character as to reasonably satisfy the defeated party, and the community at large, that the loser has had, in common parlance, a fair show,— and this is especially true in that large class of cases, wherein personal feeling is involved or in which the community, for any reason, has taken an interest and become divided in sentiment.

If a case is determined by a verdict of a jury, sustained by the approving judgment of the court, it is a much more difficult matter for the defeated litigant to induce a belief among his neighbors that the conclusion reached is the result of undue influence or of unfair means than if the case is heard before the court alone.

A litigant and the community may be satisfied that a given decision is erroneous and that the court and jury have been misled, or have erred in reaching the conclusion from the proven facts, and yet no particular harm results from such belief so long as such supposed wrong conclusion is charged only to errors of judgment or knowledge, but if it becomes a belief that the decision has been controlled by improper influences or motives, then great harm results. In such cases, although the court may be absolutely impartial, yet the existence of a contrary, though mis-

taken belief in the community, is nearly as fatal in its effects as though such belief was well founded.

In this respect the jury system is a great aid in the administration of justice. If the burden is placed upon the judge, either alone or aided by a board in whatever way constituted, of deciding upon the facts of all cases, then he becomes chargeable, in the eyes of the community, with all the errors that may be committed, and is the target for all the criticisms that the defeated parties may choose, in the bitterness of defeat, to set afloat, and in the progress of time, these accusations, ill founded though they may be, will surely impair the confidence of the public in the judicial tribunals of the land, an evil far outweighing the mischiefs of many mistakes of fact in the settlement of litigated cases.

Another consideration of weight in favor of the retention of the jury as part of our judicial machinery, is that thereby the people at large are kept in touch with the system, with the feeling that they form a part of it.

Abolish juries and conduct all trials before courts and commissioners and it will not be long before the community at large will feel that they no longer form part of the system, and hence become out of sympathy with it, and as a consequence will be led to distrust the courts as a species of star chambers.

Under our form of government, it is of the utmost importance that in every possible way, the mass of the people should be identified with the machinery of the government, and should actively participate in the various movements thereof.

Akin to this thought, is the farther one, of the value of the jury system as a means of education.

In the rural districts of the country especially, it is certainly of value that, several times in each year, a fair proportion of the community are brought together under circumstances which enable them to hear the discussion and decision of cases involving matters of the highest importance to the community.

Nearly all the questions of moment in the business and political world alike, are sure to become involved in the cases that are heard and determined in the courts of the country, and opportunity is afforded to those in attendance thereon, to hear the views advanced in support of the one or the other side of the question, and to weigh the same in the light thrown thereon by the arguments of counsel before the jury.

It is probably not far from the truth to estimate that there are in attendance upon the sessions of the courts in the several States, one hundred thousand jurymen yearly. In addition to this num-

ber are the many who attend as spectators, attracted, it may be, from mere curiosity, or from an interest in the questions expected to be discussed.

In what other way can information regarding the practical working of the laws, as they touch the manifold business interests of the community, be so readily brought home to the citizens?

The new light, the better comprehension, the broader view gained by the juror of the question or questions he has heard discussed and upon which, perhaps he has been called upon to decide a given case, is not limited to himself alone, but he will in turn convey it to his neighbors and associates.

In view then, of the direct and indirect benefits of the jury system, and of the practical working thereof, is it clear that the evils connected therewith outweigh the benefits, or that any other method can be substituted therefor that will assure, in the aggregate, better results?